

## REMARKS

### Status of the Claims

In the Office Action, claims 1-23 were noted as pending in the application. claims 1, 5-13, 18-20, 22 and 23 are rejected. Claims 2-4, 14-17 and 21 are objected to.

#### A. Summary of Cited References

Before addressing the Examiner's rejections, a brief summary of the cited reference is provided.

#### U.S. Patent Publication Number 2004/0042444 to Edmon ("Edmon")

Edmon relates to voice communication between a subscriber terminal through a public switched telephone network or internet protocol network. Abstract. A called party end-system interfaces with an IP network using a well known interface. [0075]. Alternatively, the called party end-system may be likewise implemented according to the invention. Id. "The invention is directed to providing a process for delivering high quality VoIP service through an ADSL access network, using a modified broadband loop emulated service (BLES) protocol over an ATM Adaption Layer 2 (AAL2) based ATM network. The local access network interfaces with the appropriate core network, such as an IP network or a public switched telephone network (PSTN), through a multi-media gateway, to connect the subscriber to a destination terminal or end-system." [0051]. When the VoIP called party end-system 42 is implemented according to the present invention, the voice packets do not include an IP/UDP/RTP header, which is subsequently added to the voice packet at the media gateway associated with the called party's local loop (not pictured). Otherwise, the voice packets include the IP/UDP/RTP headers to enable return routing through the IP network 40. [0084].

#### B. Objection to the drawings

Applicant has corrected the drawings in accordance with Examiner's suggestions and has attached the corrected drawings hereto.

#### C. Rejection of claims under 35 U.S.C. § 112 [2].

On page 3 of the Office Action, claims 1, 2, 19 and 23 are rejected under 35 U.S.C. § 112 as for lack of antecedent basis. The claims amended above overcome the rejection. Withdrawal of the rejection is respectfully requested.

#### D. Rejection of claims under 35 U.S.C. § 103(a)

On page 5 of the Office Action, claims 2-4, 15, 20 and 21 are rejected under 35 U.S.C. § 103 as being obvious over Applicant's cited art in view of U.S. Patent Number Edmon. The reasons that the claims patentably distinguish over the reference are addressed below.

#### E. The Claims are not Obvious over the Cited References

Applicant respectfully submits that the subject matter of the claims patentably distinguish over the cited references. Under MPEP § 2142, for an examiner to establish a

*prima facie* case of obviousness, “three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant’s disclosure.” If any of these three criteria are not met, the Examiner has not met the burden of establishing a *prima facie* case of obviousness, and the rejection should be withdrawn.

Furthermore, each dependent claim includes all of the limitations of the independent claim from which it depends. If an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. MPEP §2143.03, citing In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Applicant respectfully submits that the burden of establishing a *prima facie* case of obviousness has not been met.

#### F. Claims are not obvious over the cited references

Claim 1 recites, among other things, “[a] modem . . . being suited for interfacing to telephone subscriber equipment and providing voice functionality . . . [a] communication network interface operable to transmit and receive voice packets over the communication network without the application and removal of network stack formatting; whereby the modem does not require a network stack.” Examiner states that the art cited by Applicant does not disclose voice interface circuitry for processing voice data packets without applying a network stack to voice packets. Examiner goes on to say, however, that Edmon discloses this feature in paragraphs [0084] – [0088]. Examiner’s position is incorrect.

Examiner has not pointed to particular passages in these paragraphs that disclose a modem that does not require a stack. In the cited paragraphs traffic flows over network 40. Network 40 is an IP network. VoIP system 42 is represented by an icon of a telephone in FIG. 1 of Edmon. However, as discussed above, network 40 transports traffic according to an IP protocol. Edmon states that “[t]he interface between the VoIP called party end-system 42 and the IP network 40 is well known. [0075]. One skilled in the art understands that IP traffic requires IP headers, containing IP source and destination addresses, for each IP packet in a traffic stream. Indeed, Edmon supports this fact in saying that packet headers either are added by a media gateway of system 42’s local loop, or the packets already contain headers. [0084]. Applicant notes that the media gateway of system 42 is not shown, and is not the same gateway as gateway 24, which is the gateway between network 40 and networks 20 and 30. Even though it is not shown, the media gateway of the local loop of system 42 is synonymous with the modem recited in claim 1 inasmuch as the local loop’s media gateway processes voice packets by adding header information prior to transmission over network 40 towards media gateway 24.

However, the local loop gateway of Edmon necessarily uses a stack because it is processing header/protocol information as stated in Edmon. The element of claim 1 recited above of the present application does not process header and other protocol information because the modem claimed in claim one does not require a network stack,

which would be required to process header information. Rather, a server performs the more complex protocol processing operations as described in the present application at paragraph [0044]. Thus, Edmon does not teach all of the elements of claim 1

Indeed, Edmon actually teaches away from the elements recited in claim 1 because the media gateway of local loop 42 processes IP header information. As discussed above, Edmon teaches that traffic packets transmitted over the local loop of called party 42 contain protocol information. Devices that send and receive such traffic having protocol information use a stack to process the information.

In reference to McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1354 (Fed. Cir. 2001), the Court of Appeals for the Federal Circuit said in In re Icon Health & Fitness, Inc., 496 F.3d 1374 that “a reference teaches away from a combination when using it in that combination would produce an inoperative result.” In the present application, claim 1 recites a cable modem that does not require a network stack. The not-shown gateway associated with the local loop of called party 42 Edmon may be analogized with the cable modem claimed in claim 1 of the present application. A person skilled in the art following the cited art would be led away from the combination of claim 1 because the reference teaches transmitting traffic packets having protocol information to the non-shown gateway. Since the non-shown gateway of party 42’s local loop would have to process the protocol information using a network stack, following the cited reference would lead to an inoperable result because the modem claimed in claim 1 of the present application does not have a stack.

Thus, not only does the reference not disclose all of the elements of claim 1, but there is not a likelihood of success in combining the references because to combine the references would result in an inoperable result. Furthermore, Edmon teaches the very scenario that the invention of claim 1 avoids, thus a suggestion or motivation to combine the references does not exist. Withdrawal of the rejection is respectfully rejected.

Similar analysis applies with respect to the other independent claims 12, 19 and 23. Withdrawal of the rejection is respectfully requested. Furthermore, since the independent claims are not obvious over the cited reference, the dependent claims which depend therefrom also patentably distinguish over the reference. Withdrawal of the rejection is respectfully requested.

The claims analyzed above are the independent claims and they patentably distinguish over the references as discussed above. All of the other rejected claims depend from these independent claims and therefore contain all of the limitations contained in their respective base claims. Accordingly, under MPEP §§2142 §2143.03, these dependent claims also patentably distinguish over the references and withdrawal of the rejection is respectfully requested.

PATENTS  
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**SUMMARY**

For all the reasons advanced above, Applicant respectfully submits that the application is in condition for allowance and that action is earnestly solicited.

If the Examiner believes that there are any issues that can be resolved by a telephone conference, or that there are any informalities that can be corrected by an Examiner's amendment please contact the undersigned at the mailing address, telephone, facsimile number, or e-mail address indicated below.

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